IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.2724 OF 2005

Vilas Digambar Khole)..Petitioner

Versus

Shri Vithoba Mandir Trust by its)
Trustees Janardhan B.Naik and others)..Respondents

Mr.S.G.Page with Mr.S.R.Page for the Petitioner.

Mr.Pramod Pawar for the Respondents.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 4TH JULY 2005

P.C.:

. The Petitioner has challenged the concurrent orders of the Courts below. The trial Court has decreed the Suit and the Appeal filed by the Petitioner has been dismissed. The Petitioner has carried out certain repairs which amounted to permanent construction as the height of the premises which were in his occupation has been increased. Stop work notice has been issued to the Petitioner by the Pune Municipal Corporation. It appears that pursuant to the said notice, the Petitioner herein was called upon to remove the unauthorised construction. Thereafter the Petitioner moved the Corporation through its Health Officer for increasing the height of the premises. It appears that the Health Officer has given

the permission.

2. Both the Courts below have rightly found that for increase in the height of the premises, it is not the sanction of the Health Officer but of the Building and Construction Department of the Corporation which would be necessary. Admittedly, there is no such sanction/permission. Therefore, the findings of both the Courts below cannot be faulted.

3. An additional ground is raised which was also raised before the lower Courts that there is a delay in approaching the Court and hence the landlord is deemed to have consented to the construction. Both the Courts below have found that there is no delay since the landlord expected that the Corporation would take action in the matter. Merely because action has not been taken for such a long period, it could not be said that the landlord was without any recourse. There is no reason to interfere with the orders of the Courts below. Hence, dismissed.

4. On the application of Mr.Page, decree not to be executed till 30th September 2005. Petitioner to file the usual undertaking in this Court within two weeks from today.